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No. _____

In The

Supreme Court of the United States

October Term, 1993

BANCA NAZIONALE DEL LAVORO,

Petitioner,

v.

SMS HASENCLEVER GmbH,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of Georgia
And The Court Of Appeals Of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When the Export Administration Act and the Anti-boycott Regulations opposing the Arab boycott against Israel provide that Banca Nazionale del Lavoro's ("BNL's") Atlanta Agency *cannot* forward anti-Israeli letter of credit documents for reimbursement, did the Georgia Court of Appeals violate federal law by ruling that BNL *can* forward them and must accept them for payment?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 5

A. Introduction 5

B. Statement of Facts 7

C. Proceedings Below 10

REASONS FOR GRANTING THE WRIT 13

THE COURT SHOULD GRANT CERTIORARI BECAUSE THE STATE COURT HAS (1) CONTRADICTED UNITED STATES PUBLIC POLICY OPPOSING THE ARAB BOYCOTT OF ISRAEL, (2) IGNORED THE POSITION OF THE ANTIBOYCOTT OFFICE, AND (3) OVERRIDDEN THE INTENT REQUIREMENT AND THE ABSOLUTE DEFENSE TO PAYMENT UNDER THE ANTIBOYCOTT STATUTE AND REGULATIONS 13

A. The Georgia Court Of Appeals Ignored The Position Of The Antiboycott Office And Created A Subjective Intent Exception That Contradicts The Antiboycott Regulations 15

B. The EAA Provides BNL With A Complete Defense To Any Obligation To Accept And Pay On The Anti-Israeli Documents Submitted By SMS 18

TABLE OF CONTENTS – Continued

Page

1. Both The Legislative History And The Statute Demonstrate An Intent To Provide A Bank In BNL's Circumstances With A Complete Defense To Payment..... 18

2. 50 U.S.C. App. § 2407(a)(1)(F) Provides BNL With A Complete Defense To Payment 21

3. A Bank Is Vested With Statutory Protection In Enforcing And Complying With The Antiboycott Regulations..... 23

CONCLUSION 25

APPENDIX:

A. Order of the Georgia Supreme Court dated March 18, 1994.....1a

B. Opinion of the Georgia Court of Appeals dated October 28, 1993.....2a

C. Order and Judgment of the Superior Court of Fulton County dated December 23, 1992.....8a

D. Order of the Georgia Court of Appeals dated December 14, 1993.....11a

E. Order of the Georgia Supreme Court dated April 8, 1994.....12a

F. Letter from Office of Antiboycott Compliance dated January 18, 1991.....13a

G. List of Entities Owned 10% or More By BNL... 15a

TABLE OF AUTHORITIES

Page

CASES

Arkansas La. Gas Co. v. Hall, 453 U.S. 571 (1981)..... 15

Briggs & Stratton Corp. v. Baldridge, 539 F. Supp. 1307 (E.D. Wis. 1982), *aff'd*, 728 F.2d 915 (7th Cir.), *cert. denied*, 469 U.S. 826 (1984).....16, 20

Bulk Oil (Zug) A.G. v. Sun Co., Inc., 583 F. Supp. 1134 (S.D.N.Y. 1983), *aff'd*, 742 F.2d 1431 (2d Cir.), *cert. denied*, 469 U.S. 835 (1984)..... 20

Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981)..... 15

Hicks v. Cantrell, 803 F.2d 789 (4th Cir. 1986)..... 15

Edward Katzinger Co. v. Chicago Metallic Mfg. Co., 329 U.S. 394 (1947)..... 17

Kolovrat v. Oregon, 366 U.S. 187 (1961)..... 17

United States v. Meyer, 864 F.2d 214 (1st Cir. 1988).....16, 17

STATUTORY AND CONSTITUTIONAL PROVISIONS

28 U.S.C. § 1257..... 2

50 U.S.C. App. § 2402..... 19

50 U.S.C. App. § 2407..... *passim*

O.C.G.A. § 11-5-103..... 7

O.C.G.A. § 11-5-107..... 7

U.S. Const., art. VI..... 3

TABLE OF AUTHORITIES – Continued

Page

REGULATIONS

15 C.F.R. Part 769 6

15 C.F.R. § 769.1 ..... 4, 12, 16, 17

15 C.F.R. § 769.2 ..... *passim*

OTHER AUTHORITIES

H.R. Rep. No. 190, 95th Cong., 1st Sess. (1977), reprinted in 1977 U.S.C.C.A.N. 362, 365 19

S. Rep. No. 104, 95th Cong., 1st Sess. (1977) 16, 21, 25

Uniform Customs and Practice for Documentary Credits 7, 10

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PETITION FOR WRIT OF CERTIORARI

Banca Nazionale del Lavoro petitions the Court for a writ of certiorari to review a judgment of the Georgia Court of Appeals as to which review on certiorari was denied by the Supreme Court of Georgia.[1]

[1] The parties to this case are Banca Nazionale del Lavoro ("BNL") and SMS Hasenclever GmbH ("SMS"). BNL is an international bank owned principally by the Republic of Italy and has holdings of 10% or more in the entities listed on p. 15a of the Appendix (holdings of less than 10% are not listed).

OPINIONS BELOW

The Order and Judgment of the Superior Court of Fulton County, Georgia, granting summary judgment against BNL and denying BNL's motion for summary judgment and motion to dismiss, is reproduced at pages 8a-10a of the Appendix to this Petition ("Pet. App."). The opinion of the Georgia Court of Appeals affirming the judgment of the Superior Court of Fulton County is reported at 211 Ga. App. 360, 439 S.E.2d 502, and is reproduced at Pet. App. 2a-7a. The Order of the Georgia Court of Appeals denying BNL's motion for reconsideration is reproduced at Pet. App. 11a. The Order of the Georgia Supreme Court denying BNL's petition for certiorari is reproduced at Pet. App. 1a, and the Georgia Supreme Court's Order denying BNL's motion for reconsideration is reproduced at Pet. App. 12a.

JURISDICTION

The Order of the Georgia Supreme Court denying BNL's petition for certiorari was entered on March 18, 1994, and the Georgia Supreme Court denied BNL's motion for reconsideration on April 8, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a), to review a final judgment by the highest court of the State of Georgia in which decision could be had and in which rights, privileges and immunities under the Constitution and laws of the United States are at issue.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional, statutory and regulatory provisions at issue are:

U.S. Const., art. VI provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

The Export Administration Act ("the EAA"), 50 U.S.C. App. § 2407(a)(1)(F) provides:

> (a) Prohibitions and exceptions
>
> (1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act [section 2402(5)(A) or (B) of this Appendix], the President shall issue regulations *prohibiting any United States person,* with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the *following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation*:
>
> * * *
>
> (F) Paying, honoring, confirming, or *otherwise implementing a letter of credit* which contains any

> condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, *and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.*

(Emphasis added).

The regulations, 15 C.F.R. §§ 769.1(e)(5), 769.2(d)(1), and 769.2(f)(5) state:

> (5) Reason or purpose can be proved by circumstantial evidence. For example, if a person receives a request to supply certain boycott information, the furnishing of which is prohibited by this part, and he knowingly supplies that information in response, he clearly intends to comply with that boycott request. It is irrelevant that he may disagree with or object to the boycott itself. Information will be deemed to be furnished with the requisite intent if the person furnishing the information knows that it was sought for boycott purposes. On the other hand, if a person refuses to do business with someone who happens to be blacklisted, but the reason is because that person produces an inferior product, the requisite intent does not exist.

15 C.F.R. § 769.1(e)(5).

> (1) No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships: (i) With or in a boycotted country; (ii) With any business concern organized under the laws of a boycotted country; (iii) With any national or resident of a boycotted country; or (iv) With any other

> person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

Id. § 769.2(d)(1).

> (5) Compliance with this section shall provide an absolute defense in any action brought to compel payment of, honoring of, or other implementation of a letter of credit, or for damages resulting from failure to pay or otherwise honor or implement the letter of credit. This section shall not otherwise relieve any person from any obligations or other liabilities he may incur under other laws or regulations, except as may be explicitly provided in this section.

Id. § 769.2(f)(5).

STATEMENT OF THE CASE

A. Introduction

This is a case of great importance to the public because the opinion of the Court of Appeals contradicts United States public policy opposing Arab boycotts against Israel. The Arab boycotts against Israel encourage businesses not to obtain goods from Israel and to include in their shipments of goods to Arab countries invoices containing language stating that the goods do not come from Israel. The United States opposes such boycotts through its federal antiboycott laws, which, among other things, prohibit banks in the United States from negotiating letter of credit documents that promote the Arab boycott and contain anti-Israeli language. *See* Export Administration Act, 50 U.S.C. App. § 2407 *et seq*, and its

attendant regulations (hereinafter referred to as the "Antiboycott Regulations"), 15 C.F.R. Part 769.

In this case, a German company, SMS Hasenclever GmbH ("SMS"), submitted to the Atlanta, Georgia agency office of BNL, letter of credit documents gratuitously containing prohibited anti-Israeli language supportive of the Arab boycott against Israel. (R411-15).[2] SMS demanded more than $17 million in payment. The letters of credit did not require the anti-Israeli language, but such language was added by SMS on its own initiative. Adhering to the federal antiboycott laws, BNL asserted that SMS' documents were unacceptable, Pet. App. 3a, and that under federal law, BNL could not be required to pay on them, having under the EAA an absolute defense against payment or other further implementation of the letter of credit. The Court of Appeals nonetheless affirmed summary judgment against BNL, ordering BNL to accept SMS' anti-Israeli documents and requiring BNL to pay SMS more than $17 million on them.

BNL respectfully submits that the Court of Appeals' ruling is inconsistent with federal law. Under federal law, when a letter of credit beneficiary (SMS) submits offensive documents, the federal statute and regulations relieve BNL of any obligation to pay. Federal law protects BNL from the quandry of having to pay SMS on offensive documents that SMS created, but then being unable, because of SMS' offending language, to negotiate the documents and be repaid. Under the Supremacy Clause

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[2] Citations are to the record in the Georgia Court of Appeals and are to the record page.

of the United States Constitution, the Georgia Court of Appeals was required to follow federal law. Its decision is contrary to both federal law and U.S. public policy and should be reversed.

B. Statement of Facts

SMS contracted to sell manufacturing goods to Iraq. (*See* R714-6, ¶¶ 15-17, 25). To pay for these goods, the Iraqi government purchaser arranged for the Central Bank of Iraq ("CBI" or "the issuing bank") to issue two letters of credit in favor of SMS. (R712, ¶ 6). As SMS shipped goods to Iraq and they arrived on site, SMS was to seek payments under the letters of credit by submitting to the paying bank specified documents – *i.e.*, invoices and other documents proving and providing title to the shipments.

After CBI issued the two letters of credit, SMS arranged for them to be "confirmed" in the United States by BNL's banking agency in Atlanta, Georgia ("BNL-Atlanta"). BNL-Atlanta issued two "confirmations" of the CBI letters of credit in favor of SMS entitled BNL Advice Nos. 11751 and 11752. (R724-33). "Confirmations" are written undertakings by one bank to honor another bank's letter of credit and to pay the beneficiary directly upon the beneficiary's submission to the confirming bank of the precise documents called for by the letter of credit. O.C.G.A. §§ 11-5-103(1)(f), 11-5-107(2); Uniform Customs and Practice for Documentary Credits ("UCP"), art. 10(b). If the documents are strictly in compliance, the confirming bank (BNL) pays the beneficiary (SMS) and *then*

forwards the documents to the issuing bank (CBI) to obtain reimbursement from the issuing bank (CBI).

SMS requested payments with respect to four sets of documents submitted to BNL under this confirmation procedure. The first two sets of documents were presented in July 1990 seeking two payments in the amounts of $8,278,200 and DM (Deutschmarks) 7,170,000. (R411-15, 714, ¶¶ 16-17). Upon reviewing the documents, BNL discovered that the invoices and certificates contained offensive and prohibited anti-Israeli clauses. The invoices stated: "We declare that the goods are neither of Israeli origin nor do they contain Israeli materials nor are they beeing [sic] exported from Israel." Pet. App. 3a. *These clauses were not called for by the letters of credit* but were added gratuitously by SMS in an apparent effort by the German company to support the Arab boycott against Israel.

These clauses are referred to as "boycott language" consisting of "negative statements of origin" stating that the goods did not come from Israel. (R412, 415). Such clauses are often requested by Arab countries to support their boycott against Israel. United States law prohibits the use of such anti-Israeli documents in the United States. *See* 15 C F.R. § 769.2. One of the key enforcement tools of this United States public policy is that the Antiboycott Regulations require U.S. banks handling letter of credit documents containing anti-Israeli statements to refuse to accept and negotiate offending documents in the circumstances identified in the Antiboycott Regulations. *See id.* § 769.2(d), § 769.2(f).

Pursuant to these regulations, BNL immediately rejected the two sets of offending, anti-Israeli documents

presented by SMS. (R715, ¶ 18). BNL later requested the position of the United States Office of Antiboycott Compliance (the "Antiboycott Office") and was advised that the anti-Israeli clauses in the SMS documents would, under federal law, preclude BNL from forwarding them in accordance with the letter of credit transaction. (R409). According to the Antiboycott Office, "[i]f the bank transmits the . . . [SMS documents with] . . . the negative certificates of origin, it will be in violation of section 769.2(d) of the Export Administration Act, which is the prohibition against furnishing information about business relationships with boycotted countries or blacklisted persons." Pet. App. 13a (Letter of January 18, 1991, from Bureau of Export Administration Acting Director, Compliance Policy Division).[3] Therefore, BNL refused to accept the documents (1) because they do not comply with the letter of credit since they cannot be forwarded, and (2) because BNL is prohibited by federal law from implementing and completing the letter of credit transaction as contemplated by accepting the documents, making payment and forwarding them to CBI to obtain reimbursement.

In November 1990, SMS submitted to BNL two additional sets of documents purporting to show that the shipments covered by the documents SMS submitted to

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[3] The Antiboycott Office advised BNL that if it transmitted the documents "without deleting the negative statements of origin, it will be in violation of section 769.2(d). . . . " Pet. App. 13a-14a. The documents at issue are legally attested and certified documents that BNL could not change. (R411-15). The language could not be deleted and the documents could not be forwarded. (R409).

BNL in July 1990 had arrived in Iraq. *See* Pet. App. 4a. BNL rejected SMS's request for these arrival-on-site payments. *Id.* Although the November 1990 documents did not contain negative certificates of origin, BNL was prevented from making additional payments under the letters of credit because payment of all preceding installments was a mandatory condition precedent that could not be fulfilled as originally contemplated without violating the Antiboycott Regulations.[4]

C. Proceedings Below

In June 1991, SMS sued BNL in the Superior Court of Fulton County seeking damages for alleged wrongful dishonor of its demands for payment. SMS claimed that the Antiboycott Office had misread the Antiboycott Regulations in stating that BNL could not forward SMS' documents. BNL denied liability, and raised the federal Antiboycott Regulations in its Answer. *See* Answer, Fourth Defense ("Plaintiff submitted documents with improper boycott language, interfering with BNL's ability to pursue reimbursement, and plaintiff is therefore barred from insisting on payment on said documents.")

The parties thereafter filed cross-motions for summary judgment. BNL raised the federal question asserted

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[4] The UCP, the international Uniform Customs and Practice for Documentary Credits, was expressly incorporated into BNL's confirmations of the CBI letters of credit, and it provides that subsequent installments in a letter of credit cease to be available when prior installments have not been properly drawn. *See* UCP art. 45.

in this petition in its first brief on its initial motion for summary judgment, asserting that "the anti-boycott regulations indicate that there is no obligation to pay when the documents presented for payment cannot be forwarded due to an anti-boycott violation." Brief in Support of Defendant BNL's Motion for Summary Judgment (Mar. 16, 1992), p. 12. BNL later argued that "[t]he regulations themselves reflect an underlying principle that, when compliance with the regulations interferes with the normal operations of a transaction, the complying party must be freed of any obligation to pay. *See* [15] C.F.R. § 769.2(f)(1)(5). . . . If the price of compliance with federal law meant that a bank would incur a loss under state law, disincentives to compliance would arise and the federal regulatory scheme would be adversely affected." BNL's Brief (Nov. 2, 1992), p. 18.

BNL also moved to have the Antiboycott Office declared to be an indispensable party with respect to any claim by SMS that sought to challenge the position of the Antiboycott Office. In December 1992, the Superior Court of Fulton County granted SMS' motion for summary judgment and denied BNL's motions, without opinion, and issued an Order and Judgment awarding SMS the sum of $17,309,638.77, plus interest. *See* Pet. App. 8a.

BNL appealed to the Georgia Court of Appeals, raising the federal question presented here and other defenses, asserting that:

> Even if letter of credit law did not relieve BNL of any obligation to pay the SMS documents containing anti-Israeli clauses, the federal law applicable here would dictate that result. Specifically, the EAA and the Antiboycott Regulations

> establish absolute defenses to any payment obligations under a letter of credit when implementation of the letter of credit is prohibited by the statute and the regulations. *See* 50 U.S.C. App. § 2407(a)(1)(F); 15 C.F.R. § 769.2(f)(5).

Brief of Appellant at 20-21. BNL argued that it was entitled to a complete defense since the Antiboycott Office had informed BNL that under the Antiboycott Regulations, BNL could not forward SMS' documents.

In October 1993, the Georgia Court of Appeals affirmed the rulings against BNL. Pet. App. 2a-7a. Without addressing the Antiboycott Office's express instruction that BNL *cannot* forward the anti-Israeli documents, the Court of Appeals theorized *sua sponte* that BNL would be able to forward them if it did so with good intent. Pet. App. 5a. The court stated that no violation of the Antiboycott Regulations can arise unless there is action taken with intent to support the Arab boycott, and inferred that it would not be a violation of the Antiboycott Regulations for BNL to forward the documents unless BNL had intent to support the boycott. The court ruled that BNL could not use its own intent to create a defense to a letter of credit obligation. *Id.*

The court did not address the Antiboycott Office's position flatly prohibiting BNL from forwarding the documents without reciting any exception for good intent. The opinion also did not address that the Antiboycott Regulations dictate that prohibited intent automatically exists merely if documents known to contain anti-Israeli language are forwarded nor did it address that the Regulations absolutely forbid the forwarding of known anti-Israeli documents. *See* 15 C.F.R. § 769.1(e)(5).

After the Court of Appeals denied BNL's motion to reconsider, BNL petitioned the Georgia Supreme Court for a writ of certiorari, again raising its federal defense under the EAA. BNL Petition for Certiorari to the Georgia Supreme Court at 1. The Georgia Supreme Court denied BNL's petition without opinion on March 18, 1994. Pet. App. 1a. BNL filed a motion for reconsideration in the Georgia Supreme Court, which the Court denied without opinion on April 8, 1994. Pet. App. 12a.

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI BECAUSE THE STATE COURT HAS (1) CONTRADICTED UNITED STATES PUBLIC POLICY OPPOSING THE ARAB BOYCOTT OF ISRAEL, (2) IGNORED THE POSITION OF THE ANTIBOYCOTT OFFICE, AND (3) OVERRIDDEN THE INTENT REQUIREMENT AND THE ABSOLUTE DEFENSE TO PAYMENT UNDER THE ANTIBOYCOTT STATUTE AND REGULATIONS.

The national policy of the United States is to prevent United States persons from facilitating unauthorized boycotts of countries friendly to the United States. 50 U.S.C. App. § 2407. This law applies to prohibit support of the Arab boycott against Israel. *See* pages 19-20, *infra*. Congress instructed the President to promulgate regulations prohibiting United States persons from engaging in activities supporting such disfavored boycotts. The President's delegate, the Secretary of Commerce, promulgated the Antiboycott Regulations, which prohibit United States persons from implementing transactions involving anti-

Israeli documents. The Antiboycott Regulations require U.S. banks given anti-Israeli documents to refuse to negotiate them where doing so, in implementing a letter of credit or otherwise, would violate the regulations. *See, e.g.*, 15 C.F.R. § 769.2(d), § 769.2(f).

Here, the Antiboycott Office advised BNL that the Antiboycott Regulations prohibit BNL from forwarding the SMS documents containing anti-Israeli language. Pet. App. 13a. Since BNL cannot forward the documents to complete the implementation of the letter of credit, BNL has refused to accept and pay on the offending documents. The Georgia Court of Appeals ignored the pronouncement of the Antiboycott Office, however, and ruled that BNL could forward the documents with good intent. The court thus contradicted the Antiboycott Regulations, as well as the interpretation of the Antiboycott Office and other federal courts, and undermined United States public policy against the use of known anti-Israeli documents.

This Court should grant certiorari to decide whether the Court of Appeals has properly determined that known anti-Israeli documents can be forwarded under the Antiboycott Regulations and to decide whether United States banks that must comply with the Antiboycott Regulations are vested with the absolute defense provided by the statute when compliance with the Regulations precludes complete implementation of a transaction.

A. The Georgia Court of Appeals Ignored The Position Of The Antiboycott Office And Created A Subjective Intent Exception That Contradicts The Antiboycott Regulations.

BNL demonstrated to the Court of Appeals that it could not be required to pay SMS because BNL was flatly prohibited from forwarding SMS' documents by the Antiboycott Regulations. Instead of addressing the flat prohibition contained in the Antiboycott Regulations against forwarding the documents, the court created a subjective intent exception that would allow BNL to forward the documents. The Court inferred that BNL could forward the documents, even though they are known to contain anti-Israeli language, so long as BNL did so with no subjective intent to support the Arab boycott. This interpretation is contrary to both the pronouncement of the Antiboycott Office and federal law.

First, the Antiboycott Office stated that BNL "*will* be in violation" of 15 C.F.R. § 769.2(d), if it forwarded the documents; it did not recognize any exception for good intent. *See* Pet. App. 13a (emphasis added). It undermines federal policy, as well as the supremacy of federal law, for a state court to contradict a federal agency's interpretation of the law that the federal agency is charged with administering. *See Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 581-82 (1981); *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 324 (1981). In addition, the Antiboycott Office's letter interpretation of the Regulations is entitled to considerable deference. *See Hicks v. Cantrell*, 803 F.2d 789, 791, 794 (4th Cir. 1986).

Second, the governing federal standard, which is elucidated in the EAA's legislative history, the Antiboycott Regulations and the governing EAA caselaw, is as follows: a United States person automatically possesses the "intent to comply with, further, or support" an unsanctioned boycott, 50 U.S.C. App. § 2407(a)(1), merely if he or she furnishes information *knowing* it is *boycott-related*, even if the party has no actual intent to support the boycott. *See United States v. Meyer*, 864 F.2d 214, 218 (1st Cir. 1988); *Briggs & Stratton Corp. v. Baldridge*, 539 F. Supp. 1307, 1313 (E.D. Wis. 1982), *aff'd*, 728 F.2d 915 (7th Cir.), *cert. denied*, 469 U.S. 826 (1984). *See also* S. Rep. No. 104, 95th Cong., 1st Sess. 40 (1977) (hereinafter "Senate Report"). The Georgia Court of Appeals failed to acknowledge that mere knowledge of a document's boycott content gives rise to the necessary intent. If known boycott language is forwarded, there is a violation; actual subjective intent to support the boycott is not required. *See Briggs & Stratton*, 539 F. Supp. at 1313; 15 C.F.R. § 769.1(e)(5).

The definition of "intent" contained in the EAA Regulations establishes that BNL would have the intent proscribed by the regulations simply by forwarding the SMS documents with the now unavoidable knowledge that they contain information that was solicited for boycott purposes. *See* 15 C.F.R. § 769.1(e)(5).[6] Since SMS'

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[6] Section 769.1(e)(5) provides in pertinent part.

(5) Reason or purpose can be proved by circumstantial evidence. For example, if a person receives a request to supply certain boycott information, the furnishing of which is prohibited by this part, and he knowingly supplies that information in response, he

documents contain boycott language and since BNL knows from reading SMS' documents that they contain this language, BNL cannot avoid having the requisite intent.

The opinion of the Georgia Court of Appeals fundamentally contradicts the intent requirement under federal law. This Court should grant certiorari to correct the Georgia court's failure to apply controlling federal law, *see Kolovrat v. Oregon*, 366 U.S. 187, 191 (1961) (involving state court construction of a federal treaty), and to resolve the conflict in the construction of the Act's intent requirement given by the Georgia Court of Appeals and the United States Court of Appeals for the First Circuit in *Meyer. See Edward Katzinger Co. v. Chicago Metallic Mfg. Co.*, 329 U.S. 394, 398 (1947).

Due to its faulty interpretation of the intent requirement, the Georgia Court of Appeals held that if BNL forwarded the SMS documents to Iraq, it would only "hazard" a violation of federal law, Pet. App. 6a, and that "any future difficulty BNL may encounter in presenting documents to CBI for reinbursement [sic] because of a violation of [the EAA] would necessarily be the result of its own violation of federal antiboycott law," *id.* at 5a. The Court mistakenly concluded that BNL would have to have a subjective bad intent before a violation would

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> clearly intends to comply with that boycott request. It is irrelevant that he may disagree with or object to the boycott itself. *Information will be deemed to be furnished with the requisite intent if the person furnishing the information knows that it was sought for boycott purposes. . . .*

15 C.F.R. § 769.1(e)(5) (emphasis added).

arise, but subjective intent is not required and is not a defense; the Antiboycott Regulations prohibit the forwarding of known anti-Israeli language and the disabling intent arises as soon as the content of the document is known. Since BNL knows the content of the documents and knows that SMS has included offensive language on its own initiative, BNL cannot forward the documents. If BNL tried to forward the documents now, violation of federal law would be a certainty, not merely "a hazard." Pet. App. 6a. The Office of Antiboycott Compliance has so advised BNL.

In addition to being incorrect, the Court of Appeals' holding undermines public policy against the use of anti-Israeli documents. Under the Court's ruling, known anti-Israeli documents could be forwarded under the veil of good intent. Yet, the regulations are designed to stamp out the use of anti-Israeli documents, not to facilitate their use. The Court of Appeals' intent analysis is flawed, and its judgment should be reversed.

B. The EAA Provides BNL With A Complete Defense To Any Obligation To Accept And Pay On The Anti-Israeli Documents Submitted By SMS.

1. Both The Legislative History And The Statute Demonstrate An Intent To Provide A Bank In BNL's Circumstances With A Complete Defense To Payment.

In adopting the specific prohibitions set forth in subparagraphs (A) through (F) of 50 U.S.C. App. § 2407(a)(1), Congress sought to strengthen existing antiboycott policy, which is embodied in § 3(5) of the EAA. *See* Senate Report at 5-6. Section 3(5) provides in pertinent part:

> It is the policy of the United States –
>
> (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States . . . ; [and]
>
> (B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States. . . .

50 U.S.C. App. § 2402(5). In adopting the provisions of the EAA at issue here, Congress was especially motivated by the Arab boycott of Israel.[7] "The 1977 amendments [to the EAA] were specifically aimed at taking a 'stronger stand' on the problem of the Arab boycott of Israel and its

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[7] The House Report states,

> While a number of foreign countries may, from time to time, make political demands on American businesses with regard to business relations with a third country friendly to the United States, the Arab boycott of Israel is the major example of a foreign boycott having sustained and substantial effects on American business.
>
> The Arab countries have conducted an organized economic boycott of Israel since the first days of the Jewish state. The effect of that boycott on U.S. foreign and domestic commerce has increased markedly since the Arab oil embargo and the dramatic increases in Arab oil prices.

H.R. Rep. No. 190, 95th Cong., 1st Sess. 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 362, 365.

impact on United States business." *Bulk Oil (Zug) A.G. v. Sun Co., Inc.*, 583 F. Supp. 1134, 1140 (S.D.N.Y. 1983), *aff'd*, 742 F.2d 1431 (2d Cir.), *cert. denied*, 469 U.S. 835 (1984); *see also Briggs & Stratton Corp.*, 539 F. Supp. at 1309-1310.

In 1977, Congress prohibited paying, honoring, confirming or otherwise implementing a letter of credit which contains any illegal boycott condition or requirement:

> [T]he President shall issue regulations prohibiting any United States person . . . from taking or knowingly agreeing to take any of the following actions . . . :
>
> * * *
>
> (F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and *no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.*

50 U.S.C. App. § 2407(a)(1)(F) (emphasis added).[8] The legislative history demonstrates that Congress intended the EAA amendments to protect a bank in BNL's circumstances from liability for refusing to pay on documentation that contains prohibited boycott terms. The Senate Report states:

> New subparagraph 4A(a)(1)(F) [now codified at 50 U.S.C. App. § 2407(a)(1)(F)] of the bill

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[8] BNL's Atlanta Agency is a "United States person" within the meaning of the statute and regulations.

> also provides that no U.S. person shall as a result of the application of paragraph 4A(a)(1) [50 U.S.C. App. § 2407(a)(1)] be obligated to pay, or otherwise honor or implement a letter of credit containing an illegal boycott condition. This is intended to insure that the beneficiary of a letter of credit cannot enforce payment of, or secure reformation of, a letter of credit containing such conditions. *The letter may not be paid, and a bank may not be required to pay.*

Senate Report at 42 (emphasis added).

2. 50 U.S.C. App. § 2407(a)(1)(F) Provides BNL With A Complete Defense To Payment.

50 U.S.C. App. § 2407(a)(1)(F) provides that "no United States person shall, as a result of the application of [50 U.S.C. App. § 2407(a)(1)], be obligated to pay or otherwise honor or implement such letter of credit," that is, "a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to *this paragraph*. . . . " 50 U.S.C. App. § 2407(a)(1)(F). The legislative history establishes that the statute is intended to insure that the beneficiary of a letter of credit cannot enforce payment of a letter of credit when some facet of its implementation is prohibited by the antiboycott regulations. *See* Senate Report at 40.

The Antiboycott Office has pronounced that 15 C.F.R. § 769.2(d) prohibits BNL from completing the implementation of the letter of credit by forwarding SMS' documents to Iraq. 15 C.F.R. § 769.2(d) was issued pursuant to "this paragraph" – that is, 50 U.S.C. App. § 2407(a)(1).

BNL's implementation of the letter of credit is thus prohibited by a regulation issued under 50 U.S.C. App. § 2407(a)(1), which is the precise situation earmarked for the absolute defense in § 2407(a)(1)(F). BNL must comply with the regulation and thus has an absolute defense to any obligation to pay under 50 U.S.C. App. § 2407(a)(1)(F).

The Secretary of Commerce also adopted 15 C.F.R. § 769.2(f), which recites numerous letter of credit restrictions, but exempts letters of credit involving foreign beneficiaries like SMS. By contrast, 15 C.F.R. § 769.2(d), the regulation cited by the Antiboycott Office here, does not contain an exemption for foreign beneficiaries. SMS claims that 15 C.F.R. § 769.2(d) should not be construed to apply to letter of credit transactions, and that only § 769.2(f) should be used to regulate letter of credit transactions. If only § 769.2(f) applied, the SMS letter of credit would be exempt since it involves a foreign beneficiary.

The Antiboycott Office has determined, however, that 15 C.F.R. § 769.2(f) is not the only regulation that applies to letter of credit transactions, and that 15 C.F.R. § 769.2(d) separately prohibits in all circumstances (including letter of credit transactions involving foreign beneficiaries) forwarding documentation containing boycott language.

Since 15 C.F.R. § 769.2(d) prohibits BNL from implementing the letters of credit by forwarding SMS' offending documents, 50 U.S.C. § 2407(a)(1)(F) expressly provides BNL with a complete defense to payment. The Secretary of Commerce has indicated its understanding

that the statutory language means that if a bank is precluded by the regulations from implementing a letter of credit, it has an "absolute defense" to payment. *See* 15 C.F.R. § 769.2(f)(5).[9]

3. A Bank Is Vested With Statutory Protection In Enforcing And Complying With The Antiboycott Regulations.

United States banks play a central role in the enforcement of the Antiboycott Regulations, and are properly vested with statutory protection in their favor when they comply with the regulations. Boycott language is frequently used in the context of letter of credit transactions, and the regulations thus require that banks refuse in appropriate circumstances to handle anti-Israeli documents as a key component of rendering anti-Israeli language commercially unacceptable in United States commerce. *See, e.g.*, 15 C.F.R. §§ 769.2(d), 769.2(f).

Banks are encouraged to comply with the regulation by virtue of the defense provided in their favor, with the assurance that compliance will not result in financial jeopardy for the bank. In contrast, the decision of the Georgia Court of Appeals places BNL in the precarious position of being required to pay SMS, while being told

---

[9] That section provides in pertinent part:

> Compliance with this section shall provide an absolute defense in any action brought to compel payment of, honoring of, or other implementation of a letter of credit, or for damages resulting from failure to pay or otherwise honor or implement the letter of credit.

15 C.F.R. § 769.2(f)(5).

by the Antiboycott Office that BNL cannot forward SMS' documents to obtain reimbursement. Under the Court of Appeals' theory, BNL should "hazard" the chance of forwarding the documents and risk incurring the wrath and civil and criminal penalties of the Antiboycott Office in the hope that it can establish a pure intent. The EAA, however, does not require BNL to encounter this hazard, and instead, frees BNL from liability when its compliance with the regulations prevents it from completing the implementation of a letter of credit.

If banks were to be placed in risk of financial jeopardy due to compliance with the Antiboycott Regulations, disincentives to compliance would naturally arise. Congress sought to avoid this by vesting banks with a complete defense to any payment obligation when compliance with the regulations precludes completion of a letter of credit transaction. The Court of Appeals' approach directly conflicts with the federal regulatory scheme, and its judgment should be reversed.

CONCLUSION

Review by this Court presents the only avenue of federal review available to BNL. BNL urges the Court to exercise its certiorari jurisdiction to reinstate the national public policy opposing the Arab boycott against Israel and protecting banks across the country that comply with the Antiboycott Regulations. The petition for certiorari should be granted.

Respectfully submitted,

WALTER W. DRIVER, JR.
RICHARD A. SCHNEIDER
Counsel of Record
KING & SPALDING
191 Peachtree Street
Atlanta, Georgia 30303
(404) 572-4600

Counsel for Petitioner
Banca Nazionale del Lavoro

APPENDIX
TABLE OF CONTENTS

Page

Order of the Georgia Supreme Court dated March 18, 1994 ..... 1a

Opinion of the Georgia Court of Appeals dated October 28, 1993 ..... 2a

Order and Judgment of the Superior Court of Fulton County dated December 23, 1992 ..... 8a

Order of the Georgia Court of Appeals dated December 14, 1993 ..... 11a

Order of the Georgia Supreme Court dated April 8, 1994 ..... 12a

Letter from Office of Antiboycott Compliance dated January 18, 1991 ..... 13a

List of Entities Owned 10% or More by BNL..... 15a

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: MARCH 18, 1994

Richard A. Schneider
KING & SPALDING
191 Peachtree St., N.E.
Atlanta GA 303031763

Case No. S94C0491

BANCA NAZIONALE DEL LAVORO v. SMS HASENCLEVER, GMBH

COURT OF APPEALS CASE NO. A93A1467

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

Sherie M. Welch, Clerk

FIRST DIVISION
MCMURRAY, P.J.
JOHNSON and BLACKBURN, JJ.

NOTICE: *MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION* to be deemed timely filed. (Court of Appeals Rules 4 and 48, March 1, 1985.)

Oct. 28, 1993

In the Court of Appeals of Georgia

A93A1467. BANCA NAZIONALE DEL LAVORO v. SMS HASENCLEVER, GMBH.

McMURRAY, Presiding Judge.

SMS Hasenclever, GmbH of Dusseldorf, Germany, ("SMS") filed an action against Banca Nazionale Del Lavoro ("BNL") for wrongful dishonor of letters of credit issued by the Central Bank of Iraq ("CBI") and confirmed by BNL's promise to honor the letters of credit pursuant to OCGA § 11-5-107(2). BNL admitted endorsing CBI letters of credit and issuing confirmation certificates in favor of SMS, but raised several defenses justifying rejection of payment demands submitted by SMS. BNL filed a motion to dismiss based on SMS's failure to join an indispensable party and the parties filed opposing motions for summary judgment.

SMS is a German corporation that contracted to sell forging machinery and spare parts to an Iraqi enterprise known as Nassr Enterprise for Mechanical Industries ("NEMI"). CBI financed most of the transaction via letters of credit and BNL confirmed the letters of credit by agreeing to be responsible for payment to SMS upon

presentation of documents affirming delivery and acceptance of the goods in Iraq. Specifically, BNL issued confirmation certificates providing for payment of 60 percent of the value of equipment upon presentation of documents proving shipment to Iraq, 10 percent of the value of equipment upon tender of documents proving arrival of goods in Iraq and 10 percent of the value of equipment upon presentation of documents proving NEMI's possession and acceptance of goods.

On July 11, 1990, SMS presented documents confirming two June 20, 1990, shipments to Iraq. The shipping documents satisfied all conditions for payment of 60 percent of the value of the goods shipped, but also included the following certification: " 'We declare that the goods are neither of Israeli origin nor do they contain Israeli materials nor are they beeing [sic] exported from Israel.' " In response, BNL transmitted the following facsimile to SMS: "ON BOTH SETS OF DOCUMENTS BOTH INVOICE AND CERTIFICATE OF ORIGIN SHOW ANTI-ISRAELI BOYCOTT DECLARATION WHICH ARE CONTRARY TO U.S. EXPORT LAWS. THEREFORE DOCUMENTS REMAIN UNPAID AT OUR COUNTERS AT YOUR DISPOSAL PENDING YOUR URGENT INSTRUCTIONS. . . . PLEASE NOTE THAT WE MUST RECEIVE YOUR RESPONSE BY JULY 19, 1990 AFTER THIS DATE WE WILL RETURN DOCUMENTS [FOR] OUR FULL DISCHARGE." SMS then attempted to acquire shipping documents that did not include the anti-Israeli certifications. However, the endeavor floundered because Iraqi officials were unavailable to confirm the replacement documents.

SMS later presented documents confirming arrival of the goods in Iraq. BNL refused these presentations, claiming the 10 percent arrival on-site payments were contingent upon the 60 percent shipping payments.

The trial court denied BNL's motion to dismiss and motion for summary judgment and granted SMS's motion for summary judgment, awarding damages in excess of $17,309,639. This appeal followed. *Held:*

1. In its first and second enumerations, BNL contends the trial court erred in denying its motion for summary judgment and granting summary judgment in favor of SMS.

"A letter of credit transaction basically involves three contracts. The contract of sale between the buyer and seller. A contract between the buyer and a bank under which the bank issues the 'letter of credit' on behalf of its customer – the buyer. The third contract is between the bank and the seller, the beneficiary of the letter of credit – in essence stating, upon presentation of the documentation required by the letter of credit I will honor your draft." *First National Bank of Atlanta v. Wynne,* 149 Ga. App. 811, 814 (1) (256 SE2d 383). "A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer. . . . " OCGA § 11-5-107(2).

In the case sub judice, it is undisputed that SMS strictly complied with all terms and conditions for payment under the confirmation certificates issued by BNL. See *First National Bank of Atlanta v. Wynne,* 149 Ga. App. 811, 814(1), 815-817, supra. However, BNL argues that it is not obliged to pay because SMS impaired its ability to

collect from CBI by presenting shipping documents with anti-Israeli certifications. Specifically, BNL reasons that any future attempt to seek reimbursement via transmission of the shipping documents to CBI may constitute a violation of 50 USC App. § 2405(5), a federal statute prohibiting letters of credit which contain a condition or requirement for compliance with a boycott of a country friendly to the United States. 15 CFR § 769.2(f)(1).

"One cannot ordinarily utilize advantageously his own fault as an exit or escape from the performance of his contractual obligations." 17A CJS, Contracts, § 459 at p. 601. See *A. M. Kidder & Company, Inc. v. Clement A. Evans & Company, Inc.*, 111 Ga. App. 484, 487(1), 488 (142 SE2d 269). In the case sub judice, any future difficulty BNL may encounter in presenting documents to CBI for reinbursement [sic] because of a violation of 50 USC App. § 2402(5) would necessarily be the result of its own violation of federal antiboycott law. This is not recognition, however, that BNL has violated federal law. It is simply acknowledgment that any such violation with regard to implementing letters of credit which contain conditions or requirements for compliance with a prohibited foreign boycott "applies only with respect to a United States person's activities taken with intent to comply with, further or support an unsanctioned foreign boycott." 15 CFR § 769.2(f)(6).[1] It thus becomes apparent

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[1] "Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular prohibited action was taken must be established." 15 CFR § 769.1(e)(4).

that the presence of shipping documents with anti-Israeli certifications is not the stumbling block for reimbursement from CBI, but is simply circumstantial proof that such a hazard exists. See 15 CFR § 769.1(e)(5). Consequently, BNL's defense that it was not obligated to honor the confirmation certificates because SMS impaired its ability to collect from CBI by presenting shipping documents with anti-Israeli certifications must fall.

2. BNL contends the parties entered into an accord and satisfaction when SMS agreed to submit replacement documents (without anti-Israeli certifications) in exchange for BNL's promise to accept the replacement documents after expiration of time for payment under the confirmation certificates. This assertion is not supported by the record.

The trial court did not err in granting SMS's motion for summary judgment and in denying BNL's motion for summary judgment.

3. In its final enumeration, BNL contends the trial court erred in denying its motion to dismiss based on SMS's failure to join "the United States Office of Anti-boycott Complaince" as an indispensable party. BNL claims that joinder of the federal agency charged with enforcing 50 USC App. § 2402(5) is necessary to determine whether BNL may transmit the shipping documents with anti-Israeli certification to CBI without violating 50 USC App. § 2402(5), thus resolving the validity of BNL's defense that SMS impaired its ability to collect from CBI.

A party is indispensable if full justice cannot be done in the party's absence. OCGA § 9-11-19(a)(1); *Pickett v. Paine*, 230 Ga. 786, 796(4, a) (199 SE2d 223). In Division 1

of this opinion, a determination of any violation of 50 USC App. § 2402(5) was unnecessary to resolve BNL's claim that SMS impaired its ability to gain reimbursement from CBI. Consequently, no reason exists for joining the federal agency charged with enforcing 50 USC App. § 2402(5).

The trial court did not err in denying BNL's motion to dismiss.

Judgment affirmed. Johnson and Blackburn, JJ., concur.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SMS HASENCLEVER, GMBH, Plaintiff, v. BANCA NAZIONALE DEL LAVORO, Defendant.	)	CIVIL ACTION FILE NO. D-90676

ORDER AND JUDGMENT

(Filed Dec. 23, 1992)

On March 16, 1992, Defendant Banca Nazionale del Lavoro ("BNL") filed a Motion for Summary Judgment.

On September 21, 1992, Plaintiff SMS Hasenclever, GMBH ("SMS") filed a Motion for Summary Judgment.

On November 2, 1992, BNL filed a Motion to Dismiss Claims Affected By Plaintiff's Failure To Join An Indispensable Party.

After full and complete briefing by the parties on all three of these motions, the Court scheduled a hearing for argument on these three motions for December 22, 1992 at 9:00 a.m. and gave due and proper notice of such hearing to both parties and their counsel.

At the hearing on December 22, 1992, the Court heard argument on the three motions from counsel for SMS and counsel for BNL.

After carefully considering all evidentiary materials of record, along with the briefs and oral argument of both

parties, the Court ORDERS, ADJUDGES, AND DECREES as follows:

a. The SMS Motion for Summary Judgment is granted. Judgment is hereby entered in favor of SMS on Counts I, II, III, and IV of SMS's First Amended Complaint against BNL. SMS shall have and recover from BNL on Count I of the First Amended Complaint the principal sum of $8,278,200.00, plus prejudgment interest on such principal sum through date of judgment in the amount of $1,422,489.40, plus post-judgment interest as provided by law. SMS shall have and recover from BNL on Count II of the First Amended Complaint the principal sum of $4,345,737.00, plus prejudgment interest on such principal sum through date of judgment in the amount of $746,752.32, plus post-judgment interest as provided by law. SMS shall have and recover from BNL on Count III of the First Amended Complaint the principal sum of $812,600.00, plus prejudgment interest on such principal sum through date of judgment in the amount of $120,153.47, plus post-judgment interest as provided by law. SMS shall have and recover from BNL on Count IV of the First Amended Complaint the principal sum of $1,379,700.00, plus prejudgment interest on such principal sum through date of judgment in the amount of $204,006.58, plus post-judgment interest as provided by law. SMS shall also have and recover from BNL its costs of action in the sum of $60.00.

b. BNL's Motion for Summary Judgment is hereby denied.

c. BNL's Motion to Dismiss Claims Affected By Plaintiff's Failure To Join An Indispensable Party is hereby denied.

SO ORDERED, ADJUDGED, AND DECREED THIS 23rd day of December, 1992.

/s/ Don A. Langham
DON A. LANGHAM
Judge, Superior Court
of Fulton County

Presented by:

/s/ Steven M. Collins
Patrick A. Norton
Steven M. Collins
ALSTON & BIRD
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
(404) 881-7000

Court of Appeals

of the State of Georgia

ATLANTA, DECEMBER 14, 1993

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case. No. A93A1467

BANCA NAZIONALE DEL LAVORO V. SMS HASEN-CLEVER, GMBH

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta

Dec. 14, 1993

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Victoria McLaughlin *Clerk.*

SUPREME COURT OF GEORGIA

ATLANTA APRIL 08, 1994

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Case No. S94C0491

BANCA NAZIONALE DEL LAVORO V. SMS HASEN-CLEVER, GMBH

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court affixed the day and year last above written.

Sherie M. Welch, Clerk.

LOGO

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

January 18, 1991

Mr. John D. Griffin
King & Spalding
2500 Trust Company Tower
Atlanta, Georgia 30303

Dear Mr. Griffin:

This is in response to your letter dated January 11, 1991 concerning SMS Hasenclever; BNL Advices No. 11751 and 11752. As you requested during our telephone conversation today, I am writing to confirm my advice to you.

The beneficiary of the two letters of credit which you faxed to me yesterday is not a United States person, and the underlying transactions are not in United States commerce. Therefore, your letter correctly stated that the prohibition of section 769.2(f) of the Export Administration Act is not applicable to the bank's implementation of the letters of credit.

Nevertheless, the bank's implementation of the letters of credit is in United States commerce, and may violate other prohibitions of the Antiboycott Law. For example, I noted that although the letters of credit requested positive certificates of origin, the benficiary [sic] supplied both affirmative and negative certificates of origin. If the bank transmits the letters of credit without deleting the negative certificates of origin, it will be in violation of

section 769.2(d) of the Export Administration Act, which is the prohibition against furnishing information about business relationships with boycotted countries or black-listed persons.

Sincerely,

/s/ Mary Martin
Mary Martin
Acting Director
Compliance Policy Division

Entities Owned 10% or More by BNL

1. ABECOR – Associated Banks of Europe Corporation S.A. – Bruxelles;
2. Agrifactoring S.p.A. (in liquidation);
3. Apifactor S.p.A.;
4. Artigianfin Holding S.r.l. – Marghera;
5. Banca Nazionale del Lavoro International S.A. – Luxembourg;
6. Banca Nazionale del Lavoro of Canada – Toronto;
7. Banca Nazionale del Lavoro S.A. – Buenos Aires;
8. Banco BNL do Brasil S.A. – San Paolo;
9. BNL Casa Financiera S.A. – Montevideo;
10. BNL EC Ltd. – Sao Paulo;
11. BNL Finance S.p.A. – Rome;
12. BNL Holding Italia – Soc. di Partecipazioni Parabancarie – S.p.A. – Milan;
13. BNL Investment Bank PLC – London;
14. BNL – U.S. Corporation – Delaware;
15. Commercio Factoring S.p.A.;
16. Compagnia di Assicurazione e Riassicurazione S.p.A.;
17. Consicurezza S.p.A. – Roma (in liquidazione);
18. Consorzio Cooperativo per la Centrale Ortofrutticola di Napoli – Societa Cooperativa a r.l. – in liquidazione – Napoli;
19. Cooperleasing S.p.A.;

20. Corit – Concessionaria Riscossione Tributi S.p.A. – Napoli;
21. Credifarma S.p.A;
22. Editoriale Lavoro S.r.l.;
23. Editoriale Lavoro S.r.l. – Roma;
24. Efibanca – Ente Finanziario Interbancario S.p.A. – Roma;
25. Energy Factor S.p.A.;
26. Ente Finanziario Interbancario S.p.A.;
27. Euromedia Garanties – Paris;
28. Factorcoop S.p.A.;
29. Farmafactoring S.p.A.;
30. Federconsorzi Leasing S.p.A. – Roma;
31. Finanziaria Italiana di Partecipazioni S.p.A.;
32. Finanziaria Italiana di Partecipazioni S.p.A. – Roma (Controllata da: Sezione Speciale per il Credito Industriale);
33. Finlombarda Leasing S.p.A.;
34. Firenze Parcheggi S.p.A.;
35. Group Factor S.p.A.;
36. Hesse Newman & Co. (AG. & Co.) – Hamburg;
37. Ifitalia – International Factors Italia S.p.A. – (Milan);
38. Immobiliare Lido di Classe S.p.A. – Ravenna;
39. In Factor S.p.A.;
40. International Factors Italia S.p.A.;

41. Istituto di Credito Piccole Industrie e Artigianato (in liquidation) – Rome;

42. Istituto Ingrosso Innovativo S.p.A. – Milan;

43. Istituto Nazionale Gestione Imposte di Consumo (I.N.G.I.C.) – liquidazione – Roma;

44. Istituto per il Credito Sportivo – Roma;

45. Istituto per L'Edilizia Economica e Popolare di Messina S.p.A. – Messina;

46. Italia Trading Service S.p.A.;

47. Italsiel S.p.A.;

48. Italy (a principal shareholder of Banca Nazionale del Lavoro);

49. ITS – Italia Trading Service S.p.A.;

50. Lavoro Bank A.G. – Zurich;

51. Lavoro Bank Overseas N.V. – Curacao;

52. Lavoro Broker Assicurazioni S.p.A.;

53. Lavoro Commissionaria S.p.A.;

54. Lavoro (Jersey) Ltd. – Jersey;

55. Lazio Lis S.p.A.;

56. Leasing Operativo Italia S.p.A.;

57. Locafit – S.p.A. – Milan;

58. Locafit Deutschland Anlagen Leasing GmbH – Frankfurt;

59. Locafit France S.A. – Paris;

60. Locazione Macchinari Industriali S.p.A.;

61. Lottomatica Societa Consortile per Azioni – Rome;

62. Multiservizi Lavoro SUD S.r.l.;

63. Multiservizi Lavoro SUD S.r.l. – Bari (Controllata da: altre Societa ed Enti del Gruppo BNL);

64. Rank Xerox Noleggi S.p.A.;

65. Riesfactoring S.p.A.;

66. Sarda Factoring S.p.A.;

67. Serfactoring S.p.A.;

68. Servizi Fiduciari Se. Fi. S.p.A. – Milan;

69. S.I.L.C. – Southwest International Leasing Company Ltd. – Chengdu;

70. Sipe Optimation S.p.A.;

71. Societa Azionaria Fiduciaria p.A.;

72. Societa di Intermediazione Mobillare S.p.A.;

73. Societa di Partecipazioni Parabancarie S.p.A. – Milano;

74. Societa di Studi Economici S.p.A.;

75. Societa Fiduciaria e di Servizi per Azioni;

76. Societa Interbancaria Nazionale Gestione p.A.;

77. Societa Interbancaria Nazionale Investimenti;

78. Societa Italiana Leasing Artigiano S.p.A.;

79. Societa Regionale per la Promozione dello Sviluppo Economico dell'Umbria S.p.A. "Sviluppumbria S.p.A." – Perugia;

80. Societe Financiere Europeenne S.F.E. – Luxembourg;

81. Sogecred S.A. – Fribourg;

82. SUD Factoring S.p.A.;

83. SUD Leasing S.p.A.;

84. Tamleasing S.p.A.;

85. T.I.E.C. – The Italian Economic Corporation – New York;

86. Trade Factoring S.p.A.;

87. Veneta Factoring S.p.A.;

88. Verwaltungesellshaft Hesse Newman & Co. AG – Hamburg.